paid in full. Withdrawing the licenses and then withholding them for an extended period of time -- while Pacific's competitor gets a head start and the licenses diminish in value as a result -- cannot be squared with the terms of the bargain.[15/]

Nor can it be squared with any sensible balancing of the hardships. In essence, the Minority Petitioners ask the Commission to relieve designated entities of the hardship of competitive inequity by imposing competitive inequity on Pacific instead. But if designated entities are forced to bear the hardship, they will be compensated for their losses because they will pay lower prices for their licenses at auction. In contrast, Pacific and the other MTA auction winners cannot receive any such compensation because their bids have already been determined and their final payments made. Equity simply cannot support shifting the hardship to the party least likely to be compensated therefor. For this reason alone, the stay should be denied.

Conclusion

The Application for Review should be denied.

[15/]Because Pacific and the other MTA licensees have already paid $7 billion for their licenses, delaying the issuance of the licenses effectively converts their payments into an extended and involuntary interest-free loan. Milgrom Decl. ¶ 7.

Respectfully submitted,

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August 10, 1995

A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	File Nos. 00001-CW-L-95
Applications for A and B Block	)	through 00099-CW-L-95;
Broadband PCS Licenses	)	Call Signs KNLF 204 through
	)	KNLF 302

OPPOSITION OF PACIFIC TELESIS MOBILE SERVICES TO THE APPLICATION FOR REVIEW OF THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, PERCY E. SUTTON, AND THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE WASHINGTON BUREAU

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SUMMARY

The National Association of Black Owned Broadcasters, the National Association for the Advancement of Colored People Washington Bureau, and Percy Sutton (collectively, "the Minority Petitioners") have filed an Application for Review of the Bureau of Wireless Telecommunications' Order that rejected their Petition to Deny *all* the Block A and Block B PCS license applications.

The Minority Petitioners raise two issues. First, they contend that the Commission's decision not to provide incentives for minority ownership in the A and B Block auctions was inconsistent with its statutory mandate. Second, they argue that the failure to provide these incentives allowed "dominant" carriers to engage in an unlawful territorial allocation of licenses.

Even setting aside (for the moment) the Minority Petitioners' lack of standing, these arguments are not properly before the Commission in this proceeding. As the Wireless Telecommunications Bureau ("Bureau") appropriately determined, they constitute nothing more than an untimely petition for reconsideration of the Commission's broadband PCS rules. Those rules declined to provide minority preferences in all auctions and instead provided preferences for designated entities in selected "entrepreneurs' blocks." For the Minority Petitioners to attempt to obtain reconsideration by launching a collateral attack through this licensing proceeding is wholly improper.

With respect to the merits, it is simply not true that the auction regime is inconsistent with the Commission's statutory

obligations. Although Congress directed the Commission to consider both avoiding an "excessive concentration of licenses" and ensuring that all segments of society have the "opportunity" to participate in PCS, there is no evidence that the Commission has failed to do so. Half of the spectrum allocated to PCS still remains unsold, and most of that spectrum (the C and F blocks) is set aside for smaller business enterprises. Moreover, the Commission has indicated that it is still considering additional ways of promoting the participation of designated entities in upcoming auctions.

Besides, Congress neither established designated entity participation as the *sole* goal of the auction process nor established specific levels of participation as minimally acceptable. Instead, it established several criteria for the design of the auction system, including the rapid introduction of PCS into the market, efficient use of PCS spectrum, and avoidance of judicial delays. The Minority Petitioners' cannot show that the Commission failed to balance these criteria properly.

The Minority Petitioners also allege that AT&T/McCaw, PCS PrimeCo, WirelessCo, L.P. and PhillieCo, L.P. constituted unlawful combinations that restrained competitive bidding. But this argument has no bearing of the license applications of parties that, like Pacific Telesis Mobile Services ("Pacific"), had nothing to do with these combinations. The Bureau so concluded below, and the Minority Petitioners do not challenge this conclusion. Moreover, the allegation of illegal conspiracies is utterly baseless.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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BACKGROUND

In 1989, the Federal Communications Commission began establishing the rules to govern a broad range of new radio communications services called personal communications services ("PCS");[1/] in 1993, Congress enacted legislation permitting the Commission to sell PCS licenses at auction.[2/] After extensive hearings, many rounds of comments, and numerous decisions developing and refining its PCS licensing and auction regime, the Commission decided to divide the 120 MHz of spectrum allotted to broadband PCS

[1/]Memorandum Opinion and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957, 4959, 4965, ¶¶ 2, 3, 18 (1994) ("Memorandum Opinion and Order").

[2/]Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002, 1993 U.S.C.C.A.N. (107 Stat.) 387 (1993) ("1993 Budget Act"), codified at 47 U.S.C. § 309. Section 309(j) of the Communications Act (effective August 10, 1993) now allows the Commission to use an auction to choose among competing license applicants if the spectrum -- like spectrum dedicated to PCS -- is used to provide service for compensation. See Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 8 FCC Rcd 7635, 7636, ¶ 11 (1993).

into six license blocks. The first two blocks, the A and B blocks, contain the largest licenses. Each A and B block license entitles the purchaser to 30 MHz of spectrum and has a "Metropolitan Trading Area" or "MTA" as its service area.

At the same time, the Commission acted to promote the participation of small businesses, rural telephone companies, women, and minorities in PCS. Accordingly, the Commission set aside the C and F block licenses -- which represent 40 MHz or one-third of the spectrum dedicated to PCS -- for these groups alone. Second Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 2348, 2392, ¶¶ 245-248 (1994). Until recently, the Commission also planned to give bidding credits to minority and woman-owned enterprises for use in the entrepreneurs' block auctions; it also employed special eligibility rules for investors in minority and woman-owned businesses.

The auction for the A and B block auctions has now taken place and, by all accounts, was an overwhelming success; it generated over $7 billion in revenues for the U.S. Treasury. After numerous rounds of spirited bidding, Pacific Telesis Mobile Services ("Pacific") purchased the right to acquire the Los Angeles and San Francisco area MTA licenses for about three quarters of a billion dollars.

The C block auction, however, has run into legal difficulties. On March 15th, 1995, the United States Court of Appeals for the District of Columbia Circuit issued a stay of the auction in response to an appeal filed by Telephone Electronics Corporation ("TEC"). TEC challenged the constitutionality of the Commission's

use of gender and racial criteria, and the Court of Appeals concluded that TEC was likely to prevail on the merits. Although TEC subsequently dropped its appeal and the stay was dissolved, the Supreme Court cast additional doubt on the legality of the Commission's gender and racial criteria when it announced its decision in Adarand Constructors, Inc. v. Peña, 63 U.S.L.W. 4523 (June 12, 1995).

Although the Commission is not of the view that Adarand necessarily precludes the use of gender and racial criteria in the allocation of PCS licenses, it concluded that the appropriate course was to eliminate those criteria from the C block auction. However, it covenanted to continue investigating the possibility of using similar criteria in other, later auctions. See Sixth Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, FCC No. 95-301, PP Docket No. 93-253, Gen. Docket Nos. 90-314, 93-252, at 1-2, ¶ 1 (released July 18, 1995) (hereinafter "Sixth Report and Order"); see Further Notice of Proposed Rule Making, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, FCC No. 95-263, PP Docket No. 93-253, Gen. Docket Nos. 90-314, 93-252, at 1, ¶ 1 (released June 23, 1995) (stressing Commission's commitment to ensuring minority participation) (hereinafter "Further Notice of Proposed Rule Making").

This course, the Commission explained, would accomplish three goals:

> (1) promotion of rapid delivery of additional competition to the wireless marketplace by C bock licensees; (2)

> reduction of the risk of legal challenge; and (3) minimal disruption to the plans of as many applicants as possible who were in advanced stages of planning to participate in the C block auction when Adarand was announced.

Ibid. Accordingly, the C and F blocks are still reserved for entrepreneurs, but the preferences for minorities and women have been eliminated from the C block auction.

Understandably disappointed with this turn of events, the Minority Petitioners now urge the Commission to deny the applications of the winning bidders in the A and B block auctions, in effect *reversing* the result of the one broadband auction that has actually taken place. However, as explained in more detail below, the arguments the Minority Petitioners urge to support their bid for such drastic action are entirely without merit.

ARGUMENT

I. The Minority Petitioners Lack Standing

To have standing to file a petition to deny (and seek review thereof before the full Commission), a party must demonstrate that the grant of the application will cause it direct injury. The Minority Petitioners contend that they have standing as representatives of potential C block licensees (who may compete with Pacific and other A and B block licensees) and on behalf of the general public and minority groups (that will use the services offered by A and B block licensees). Such vague and generalized assertions are insufficient to establish standing, as the Bureau correctly observed. See Order, Applications for A and B Block Broadband PCS Licenses, DA 95-1411, at 4-5, ¶¶ 9-10 (June 23, 1995) ("Licensing Order").

The Commission long has held that *potential applicants* for competing licenses lack standing to file a petition to deny. Id. at 5, ¶ 9 (citing Pittsburgh Partners, L.P., 10 FCC Rcd 2715, ¶ 4 (1994) and WIBF Broadcasting, 17 F.C.C. 2d 876, 877 (1969)). The Minority Petitioners are even one step further removed from being potential applicants for competing licenses; they claim to be the *representatives of potential applicants for competing licenses* (and the *representatives of potential customers*). Worse, they fail to provide any evidence that their members *intend* to seek a license that will put them in competition with Pacific or any other licensee, or that their members live in and intend to utilize the services of a particular licensee. Licensing Order at 5, ¶ 10. This alone is fatal to their challenge.

Nonetheless, the Minority Petitioners contend that a 1966 decision from the D.C. Circuit -- United Church of Christ v. FCC, 359 F.2d 994, 1005 (D.C. Cir. 1966) -- establishes that they have standing to represent the interests of the general public. Application for Review at 4 ("The United Church of Christ Court held that the religious organization had standing because it represented the public interest."). But United Church of Christ says no such thing. There, the broadcaster seeking license renewal apparently had advocated racial segregation but denied proponents of integration the right to offer their viewpoint. The individuals and organizations seeking to file a petition to deny specifically asserted that: (1) the broadcaster had denied them, both as individuals and organizations, the ability to answer their critics

under the FCC's fairness doctrine; (2) that they were viewers of the broadcaster and that their viewpoints were not represented; and (3) that they were being denied the ability to receive a fair and balanced presentation of all viewpoints. 359 F.2d at 998-99.

Based on these representations, the D.C. Circuit rejected the Commission's argument that electrical interference and economic injury were the only conceivable bases for standing. Id. at 1000-02. In the Court's view, it was clear that the parties objecting to license renewal would, as listeners and speakers alike, suffer "direct" injury from renewal of the broadcast license. Because renewal meant that they would be denied the right to air their views and receive a balanced presentation from the broadcaster, there was nothing speculative about the direct harm renewal would cause them. Id. at 1002-03.

Here, in contrast, the Minority Petitioners offer nothing but speculation concerning how the Commission's licensing orders might affect them or their members. They do not allege that they or their members are actual competitors or users of PCS services in any particular area. Nor do they contend that the quality or content of the service they receive will be in any way affected by the grant of the licenses. As a result, they lack standing to challenge the license awards.[3/]

[3/]For the same reason, the Minority Petitioners' reliance on License Renewal Applications of Certain Broadcast Stations Serving the Baltimore Metropolitan Area, 89 F.C.C. 2d 1183 (1982), and Application of Golden State Broadcasting Corp., 71 F.C.C. 2d 1284 (1979), is misplaced. In both of those cases, the parties filing the petition to deny provided evidence that they *in fact* would be (continued...)

II. The Minority Petitioners' Challenges Are Improper and Untimely Attempts to Seek Reconsideration of Rulemaking Orders

Although the Minority Petitioners do touch on the issues of standing and the merits, they never address the Bureau's primary reason for rejecting their challenge -- its procedural impropriety. The Commission's competitive bidding/licensing regulations limit the scope of the licensing inquiry to one issue: whether the applicant is *qualified* to hold the license. If the applicant is qualified, the license *must* issue. See 47 C.F.R. § 1.2108(d)(1) (If the Commission determines that "an applicant is qualified and there is no substantial and material issue of fact concerning that determination, it *will* grant the application." (emphasis added)); see also 47 U.S.C. § 308(b) ("qualifications" include "citizenship, character, and financial [and] technical" resources). As the Bureau explained below, "[t]he purpose of the petition to deny process is to assess challenges to applicants' qualifications to be Commission licensees." Licensing Order at 6, ¶ 12. Consequently, attempts to raise generalized rulemaking issues must be rejected as "untimely and procedurally improper." Ibid.[4/]

[3/](...continued)
adversely affected by the licensing order. In Baltimore Area Renewals, the organization filing the petition to deny pointed out that its member were viewers and listeners of the challenged stations, and filed affidavits to support that assertion. 89 F.C.C. 2d at 1184. In Golden State, the petitioners attested that they in fact lived around the station and would be adversely affected by the proposed construction. 71 F.C.C. 2d at 1285. The Minority Petitioners have made no showing of this sort.

[4/]The Commission's more general regulation concerning the consideration of applications, 47 C.F.R. § 24.832(b), states that (continued...)

The Minority Petitioners do not challenge Pacific's or any other applicant's qualifications. Instead, they argue that the Commission's auction design was defective because, according to them, it has led to undesirable results. Specifically, they argue (at 8) that the Commission's decision to auction A and B block licenses separately from and prior to the C block licenses, as well as its failure to include incentives for designated entities in the A and B block auctions, have led to an excessive concentration of licenses and an absence of opportunity for minorities that are inconsistent with the Commission's statutory mandate; they further argue (at 9-14) that these decisions have led to unlawful territorial allocations among A and B block bidders.

The Commission's auction design, however, was the subject of extensive rulemakings in which the Minority Petitioners were free to and did participate actively. Each of the objections the Minority Petitioners now raise was specifically addressed in those rulemakings. In its Fifth Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 5532, 5584-88, ¶¶ 118-127 (1994) ("Fifth Report and Order"), the Commission expressly declined to make special provisions for designated entities on the A and B blocks, concluding that creation

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4/ (...continued)
an application will be granted without a hearing so long as the application itself is acceptable, is not subject to a post-auction hearing or comparative hearing, the grant of the application will not cause harmful electrical interference, there are no substantial and material questions of fact, and the applicant is qualified. The Minority Petitioners make no effort to show that their objections fall into any of these categories either.

of the C and F "entrepreneurs' blocks" would meet the statutory mandate and be consistent with the public interest; as the Bureau points out, this conclusion was affirmed "on reconsideration more than eight months ago." Licensing Order at 6, ¶ 12 (citing Fifth Memorandum Opinion and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 10 FCC Rcd 403, 412-14, ¶¶ 10-16 (1994)). Similarly, the appropriateness of auctioning the C blocks separately from and after the A and B blocks was resolved and reaffirmed long ago. Fifth Report and Order, 9 FCC Rcd at 5547, ¶ 37 (1994); Fourth Memorandum Opinion and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC 6858, 6863, ¶¶ 28-29 (1994).

The Minority Petitioners offer no reason why the Commission should let them litigate these issues yet again here. To the contrary, they entirely ignore the Bureau's undeniably correct conclusion that their arguments are "an untimely petition for reconsideration of the Commission's broadband PCS auction rules rather than a valid basis for a petition to deny." Licensing Order at 6, ¶ 12. For this reason alone the Minority Petitioners' Application for Review should be denied.

III. The Minority Petitioners' Challenges Are Without Merit

Even if the Commission were to consider the Minority Petitioners' challenges on the merits, it would discover that they are wholly meritless and have no bearing on Pacific's license in any event. The Court of Appeals for the District of Columbia Circuit has explained -- and the Bureau noted below -- that Section 309(d)

requires the protesting party to "submit a petition containing 'specific allegations of fact sufficient to show . . . that a grant of the application would be prima facie inconsistent with the public interest, convenience and necessity.'" Astroline Com. Co. Ltd. Partnership v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (original brackets omitted). Neither of the Minority Petitioners' arguments meets this threshold showing.

A. The Commission Has Not Violated Statutory Requirements

The Minority Petitioners' primary argument (at 8) seems to be the Commission's decision *not* to include incentives for minority bidding in the A and B block licenses has led to an excessive concentration of licenses and the relegation of minorities to a few "inferior" frequencies. It seems to Pacific that the Minority Petitioners' indictment of the Commission's auction is both baseless and premature. Half of the spectrum allocated to PCS still remains unsold, and most of that spectrum (the C and F blocks) is set aside for smaller business enterprises. How the Minority Petitioners can be complaining about an excessive concentration of licenses when so much spectrum remains to be allocated is simply baffling.

Moreover, the Commission has bent over backwards to ensure that women and minorities have the opportunity to participate in PCS. Indeed, the D.C. Circuit concluded in TEC v. FCC that -- as a constitutional matter -- the Commission probably had gone too far; it temporarily stayed the C block auction as a result. Despite this, the Commission has indicated that it is still considering additional options to promote the participation of minority groups

and women in upcoming auctions. As the Commission explained in its Sixth Report and Order (at 1, ¶ 1), it does not believe that race and gender-based measures "are inappropriate for future auctions of spectrum-based services." Consequently, the Commission is now considering the means it should "take to develop a supplemental record that will support use of such provisions in other spectrum auctions held post-Adarand." Id. at 1-2, ¶ 1. The Commission's extensive consideration and reconsideration of this issue belies any accusation that it has disregarded its statutory mandate. See also Further Notice of Proposed Rulemaking at 1, ¶ 1 (The Commission is "committed" to the goal of "ensur[ing] that . . . designated entities are afforded opportunities to participate . . ." (footnote omitted)).

Besides, the Minority Petitioners misconstrue Section 309(j) as requiring some absolute level of minority participation or as directing that the Commission make minority participation its only goal. Section 309(j) does state that, in establishing its auction system, the Commission should consider avoiding "excessive" concentration of licenses and ensuring that a wide range of applicants have the "opportunity" to participate. But it does not state that the Commission is required to implement those objectives by establishing minority preferences and incentives for each and every block of spectrum. Nor did it establish that the ends of avoiding excessive concentration and ensuring open opportunity for all would be the Commission's exclusive goals.

To the contrary, Congress required the Commission to consider other, additional objectives -- objectives that would be unacceptably undermined by such a single-minded approach. Specifically, Congress directed the Commission to develop an auction system that ensured "the development and rapid deployment of new technologies, products, and services for the benefit of the public," 47 U.S.C. § 309(j)(3)(A), recovered for the public a portion of spectrum value while avoiding "unjust enrichment," id. at § 309(j)(3)(C), and promoted "efficient and intensive use of the electromagnetic spectrum," id. at § 309(j)(3)(D). See also 47 U.S.C. § 309(j)(4)(C) (directing the Commission to consider the "public interest" generally, avoidance of "unjust enrichment," and the promotion of "investment in and rapid deployment of new technologies and services."). Given these competing goals, the Commission had to strike an appropriate balance among them. Nowhere do the Minority Petitioners demonstrate that the balance the Commission struck was arbitrary or inconsistent with the statute.[5/]

Indeed, the Minority Petitioners' demand for greater race-based criteria and incentives is itself inconsistent with one of the primary directives of the statute. In Section 309(j)(3)(A),

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[5/]The Commission concluded that selling the A and B blocks separately and ahead of the remaining blocks sense because: (1) consumers would benefit most from the rapid issuance of the most valuable licenses, (2) the value of the revenue generated by the auction would be greater if more valuable licenses were sold sooner, and (3) selling the larger licenses first would promote partnerships between large, A & B block licensees and smaller, entrepreneurs' block bidders. Fifth Report and Order, 9 FCC Rcd at 5547-48, ¶¶ 39-40. The Minority Petitioners do not demonstrate why these conclusions are incorrect.

Congress specifically required the Commission to design its auction system so as to ensure the rapid deployment of new services and technologies "without administrative or judicial delays." Recent events have demonstrated that the *inclusion* of racial and gender preferences inevitably leads to legal challenges and the delays that Congress directed the Commission to avoid. It was for this reason that the Commission reluctantly eliminated the racial and gender-based criteria from the C-block auctions in its Sixth Report and Order (at 1, ¶ 1). It is simply not possible to reconcile the Minority Petitioners' bid for the inclusion of such preferences in *all auctions* -- including the A and B block auctions that have already taken place -- with this legitimate, statutory goal.[6/]

[6/]To the extent that the Minority Petitioners are arguing that the *delay* in the C block and other entrepreneurs' block auctions is pushing their participation below statutory thresholds -- and that A and B block licensing should be delayed to even the field -- Pacific will address their argument when it responds to their separately-filed stay request. For now, it is enough to observe that the argument is based on pure speculation. A similar argument was made when the Commission licensed wireline carriers ahead of their non-wireline competitors in cellular markets, and non-wireline carriers have participated fully and competitively in the provision of cellular service nonetheless. Moreover, even if one assumes that designated entity participation will be adversely affected, there is no reason to think that it will be so adversely affected as to violate the statutory command. After all, the statute commands the Commission to consider procedures to give designated entities the "*opportunity* to participate" in PCS. 47 U.S.C. § 309(j)(4)(D) (emphasis added). It does not command the Commission to guarantee their participation -- and it certainly does not mandate a specific participation level.

B. The Minority Petitioners Do Not Allege That Pacific Participated in Unlawful Activities and Have No Basis for Alleging Unlawful Activities In Any Event

The Minority Petitioners' other argument (at 9-14) is that the absence of incentives for minority participation somehow triggered unlawful territorial allocations. Specifically, they contend (at 9) that AT&T/McCaw, PCS PrimeCo, and WirelessCo, L.P. and PhillieCo, L.P. constitute unlawful combinations for the purposes of limiting competition.

As an initial matter, this allegation has absolutely *nothing* to do with numerous licensees that, like Pacific, had no involvement in the challenged alliances. As the Bureau properly concluded below, this argument offers "no grounds whatsoever for denying the applications of the fifteen auction winners *other* than AT&T, PCS PrimeCo, and WirelessCo." Licensing Order at 7, ¶ 14. The Minority Petitioners do not dispute this conclusion; they ignore it instead.

In any event, the Minority Petitioners do not offer specific allegations of fact to support their charge. As the Bureau observed, the Minority Petitioners are not required to provide a smoking gun, but they must provide "*some modicum* of a factual showing that collusion occurred -- particularly in an auction that lasted over three months and resulted in aggregate winning bids of nearly $8 billion." Licensing Order at 7, ¶ 14 (emphasis added). Besides, Pacific can attest to the fact that bidding was both spirited and competitive; at least in part as a result of bidding competition from the challenged alliances, the licenses Pacific purchased ended up being among the most expensive in the Nation.

IV. Issuance of the Licenses Is in The Public Interest

When Congress authorized spectrum auctions for PCS, it repeatedly stressed that time was of the essence. Not only did Congress establish a fixed schedule for the auction and rulemaking process,[2/] but it expressly directed the Commission to ensure "the development and rapid deployment of new technologies, products, and services for the benefit of the public." 47 U.S.C. § 309(j)(3)(A); see also 47 U.S.C. § 309(j)(4)(C) (directing the Commission to consider the promotion of "investment in and rapid deployment of new technologies and services.").

The Commission has moved determinedly forward with PCS, establishing its auction rules and conducting two, highly successful PCS auctions. The industry's response to the Commission's efforts has been overwhelming: The A and B block broadband PCS licenses sold for over $7 billion, and Pacific alone paid over three quarters of a billion dollars for its licenses. Having paid so much for the right to compete with incumbent cellular operators and to begin implementing this new service, Pacific and other licensees are now investing in the development of their advanced PCS networks. Congress's ambition of rapid PCS roll-out is now becoming a reality and the ultimate beneficiaries will be the public. As Professor Paul Milgrom explained to the Bureau in his declaration, these new

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[2/] See Section 6002(d)(1), (2) of Pub. L. 103-66, 107 Stat. 312, 387. The House Conference Report expressly stated that these provisions were designed to speed "the licensing of [PCS]." H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 492 (1993).

services will bring billions of dollars worth of benefits to consumers.[8/]

By the same token, delays in licensing and uncertainty are costly. Each day that licensing is delayed is a day that consumers must do without new services and beneficial competition in wireless markets. As Professor Milgrom explained to the Bureau below, a realistic estimate of public welfare loss of delaying the issuance of these licenses amounts to nearly $2.7 billion *per year*, or $225 million per month.[9/] The Minority Petitioners' attempt to forestall licensing (and with it the introduction of these new services) thus

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[8/]Declaration of Paul W. Milgrom ¶ 6 (May 18, 1995) (submitted in connection with Pacific's Opposition to NAACP's Petition to Deny (May 25, 1995) and Pacific's Opposition to NAACP's Request for a Stay (May 19, 1995)) ("Milgrom Decl."). For the Commission's convenience, a copy is attached hereto.

[9/]Milgrom Decl. ¶ 6. The record before the FCC supports this conclusion. See, e.g., Statement of A. Daniel Kelley, Senior Vice President, Hatfield Associates at 1, Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Dkt. No. 90-314 (FCC Apr. 11, 1994) ("Investment and innovation are already being held back because spectrum allocations are being delayed . . . [T]he delay in licensing cellular cost the U.S. economy 86 billion dollars. It is, of course, possible to debate [the] methodology and data and arrive at a different number. However, the fundamental point is sound. The economic welfare loss associated with delaying the introduction of services can be quite large."); Statement of David A. Twyver, President of Wireless Systems, Northern Telecom, in Support of the FCC Demand Panel Related to Personal Communications Services at 6-7 (Apr. 11, 1994) (Studies "have shown that if the PCS industry is delayed, the demand for such services will significantly decrease. Delays in the deployment of theses services will impact this country's competitive position internationally, allowing other countries to become more technologically advanced and reducing our exports . . . . The adverse impact delays will have on demand and competitive positioning will in turn adversely affect this country's economic structure and much needed new business and job opportunities the PCS industry will provide.").

has the potential of costing society billions of dollars in social welfare.

CONCLUSION

The Application for Review should be DENIED.

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